

## NOTE CONCERNING GENERAL ORDER 2-32, DOMESTIC VIOLENCE

Domestic or family violence (including spouse abuse) has received widespread public attention as a serious social problem affecting people in all economic, social, and ethnic groups. Many law enforcement agencies consider violence within the family to be the most frequent and under-reported crime in the United States. Further, law enforcement officers have found spouse abuse to be a difficult problem for the criminal justice system to handle effectively. Some have become frustrated, indifferent or even hostile after encountering victims who are repeatedly abused and do not press charges or return to the battering relationship. Still others hold onto faulty beliefs that victims really provoke the attack or masochistically enjoy beatings.

Persons who resort to violence **do not** lack self-control: most try to dominate their partners. Stress, isolation, and family circumstances usually contribute to violence. Many researchers have described a cycle of violence involving three phases:

1. During the **tension-building** phase, the victim tries to keep the peace, but is subjected to increasing verbal threats.
2. The **acute battering phase** occurs when the perpetrator violently assaults the victim.
3. In the **loving respite phase** (which may not always be evident), the abuser changes behavior and acts remorseful and loving. Both abuser and victim may believe the abuse will never recur. As the cycle continues, this phase becomes shorter and may entirely disappear.

**The patrol officer who responds may find the disputants in any one of these phases. The officer must be aware of this cycle in order to respond appropriately and effectively. Alcohol and drug abuse frequently figure in cases reported to law enforcement agencies.**

Policy-makers should know that recent studies of police responses to domestic violence do not necessarily agree on the appropriate guidance to communicate to officers through written policy. For example, one recent study has concluded that victims of domestic violence are less likely to be repeat victims if they seek help through the legal system. Law enforcement officers must know that abuse often begins as a threat or a shove, but escalates into repeated beatings causing serious physical injury. If effective intervention does not occur, the abuse continues and, in some cases, it may lead to homicide.

Yet the precise nature of law enforcement intervention is not easy to gauge. Different approaches, whether mediation, arrest, or some other solution all appear to have different outcomes depending on the particular suspects, communities, and other characteristics. Some studies have revealed that the deterrent effect of arrest is **least** among the unemployed. Although the current trend supports mandatory arrest policies, law enforcement executives should know that research remains inconclusive. Whatever

policy guidance executives provide for their personnel, they should regard as subject to change.

The best basis upon which to devise policy is to analyze past domestic violence cases. Field officers are best served by accurate information. Officers dispatched to domestic violence incidents, therefore, should know if they are dealing with chronically violent people. They should respond fully aware of a violent household's history so that they can adjust their behavior accordingly.

The DCJS sample directive promotes arrest when the legal elements of the offense are present. Officers are not precluded from making additional decisions concerning the victim or future incidents involving the same people. **In developing policy, law enforcement administrators must consult with social service agencies and prosecutors to develop a unified approach to local problems.** Those who wish to learn more about the major domestic violence research projects around the country, or who wish to examine other policy-related materials on the topic should contact the Law Enforcement Services Section or the Victims Services Section, DCJS.

Among other requirements, Virginia law requires **mandatory** arrest upon probable cause for specified violent acts, and mandates law enforcement agencies to adopt written policies (to include specified components). Take particular note of the mandatory issuance of emergency protective orders, and the role of deputies in obtaining them. The law further requires agencies to specify written guidance on providing victims with information on legal and community services, and to transport victims to medical facilities or safe shelters. Note that many of the requirements placed on law enforcement for handling domestic violence incidents also apply to stalking/serious bodily injury.

The Victims Services Section has also developed a domestic violence curriculum for law enforcement which is updated periodically. This curriculum, the training staff, and other instructional resources are available through the Victims Services Section. Further, grants to support the implementation of domestic violence arrest policies are available at both the state and federal level. Contact the Victims Services Section for more information. Visit the DCJS web site for further information at [<http://www.dcjs.org/>](http://www.dcjs.org/).

<b>POLICE/SHERIFF'S DEPARTMENT      GENERAL ORDERS</b>	
<b>SUBJECT: Domestic Violence</b>	<b>NUMBER: 2-32</b>
<b>EFFECTIVE DATE: January 2005</b>	<b>REVIEW DATE: (annually)</b>
<b>AMENDS/SUPERSEDES: GO 2-32, Issued 7/99</b>	<b>APPROVED: _____ Chief of Police/Sheriff</b>
<b>VLEPSC STANDARDS: ADM.02.04-.05; ADM.23; OPR.02.03</b>	

### **NOTE**

This order is for internal use only and does not enlarge an officer's civil or criminal liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third-party claims. Violations of this directive, if proven, can only form the basis of a complaint by this department, and then only in a non-judicial setting.

### **INDEX WORDS**

Arrests; in domestic disputes  
 Dispatcher responsibilities (re: domestic violence)  
 Domestic violence  
 Family violence  
 Firearm; purchase or transport while subject to a protective order  
 Interviewing (participants of domestic disputes)  
 Patrol officer's responsibilities (re: domestic violence)  
 Predominant physical aggressor  
 Protective orders  
 Search of premises  
 Stalking/serious bodily injury  
 Victims; of domestic violence

## **I. POLICY**

The department assigns domestic or family violence (domestic disturbance) calls a high priority. The nature and seriousness of crimes committed between family or household

members are not mitigated because of the relationships or living arrangements of those involved. Therefore, law enforcement must exercise leadership in the community in responding to domestic violence. An immediate criminal justice response can make a major difference in the disputants' lives. With all due consideration for their own safety, department personnel responding to a domestic disturbance call shall (1) restore order; (2) arrest persons when probable cause exists that a crime has occurred; (3) provide safety and security for the crime victim(s); and, (4) help participants contact appropriate agencies to help prevent future occurrences.

## II. PURPOSE

To define domestic violence and related offenses, outline a safe procedure for handling violent incidents and calls, describe measures to end violence and protect victims.

## III. DEFINITIONS

### A. Assault

See *Virginia Code* §§ 18.2-57 and 18.2-57.2 ("Assault and Battery Against a Family or Household Member," which upon a third or subsequent conviction of the same or similar offense of any jurisdiction within a twenty-year period shall be treated as a Class 6 felony). [Note: This paragraph revised July 2004.]

1. A related matter, § 18.2-60 criminalizes the sending of letters to anyone threatening death or injury (Class 6 felony).
2. A magistrate issuing a warrant for violation of § 18.2-57.2 shall also issue an emergency protective order.

### B. Domestic violence shelters/programs

Services that are provided (usually 24 hours a day) for women and their children who have been physically or emotionally abused, or who have been threatened with abuse by their spouses or partners. Services include crisis intervention, counseling, shelter, escort to court, food, clothing, and transportation.

### C. Family abuse

Any threat or act of violence, including forceful detention, which results in physical injury or places one in reasonable apprehension of bodily injury and which is committed by a person against such person's family or household member (§ 16.1-228). [Note: This provision revised July 2003.]

D. Family or household member

Per §§ 18.2-57.2, 16.1-228, and 19.2-81.3, includes:

1. Spouses, whether or not residing in the same home.
2. Former spouses, whether or not residing in the same home.
3. Persons who have a child in common, whether or not they have ever been married or resided together.
4. Parents, children, stepparents, stepchildren, grandparents, grandchildren, brothers and sisters half-brothers and half-sisters regardless of whether they reside in the same home with the suspect. **[Note: This provision revised July 2003.]**
5. Parents-in-law, children-in-law, brothers- and sisters-in-law who reside in the same home with the suspect.
6. Persons who cohabit or who, within the previous 12 months cohabited with the suspect, and any children of either who then resided in the same home as the suspect.

[Warrants against family/household members are heard by Juvenile and Domestic Relations Court.]

E. Predominant physical aggressor **[Note: This section was revised July 2004.]**

(See § **19.2-81.3 and 81.4**) The party that poses the greatest threat. The predominant aggressor **is not necessarily the first** disputant to engage in assaultive behavior, but the one with the most ability and inclination to inflict physical injury. Officers shall identify a predominant physical aggressor based on the **totality of the circumstances**. Some or all of these characteristics may be present:

1. Evidence that any of the parties acted in self defense.
2. A history of violence (prior assault convictions) of the parties involved, including history of calls for service.

3. The relative severity of injuries inflicted on all parties, plus consideration whether the injuries were offensive or defensive.
4. The relative size, bulk, and strength of the parties involved.
5. Evidence from persons involved in or witnesses to the incident.
6. The likelihood of future injury to any party.
7. Current or previous protection orders filed against either party.

*[Note: This sample directive strongly discourages officers from making dual arrests. Agencies are reminded that they may need special procedures for handling small children where the primary caregiver has been arrested or injured. An agency's policy should address the custody and care of children.]*

F. Protective order **[Note: This section corrected November 2004.]**

A court order of protection on behalf of an abused family/household member that restrains the abuser from further acts of violence, may order the abuser to refrain from further contact, vacate the residence, relinquish custody of a vehicle, provide temporary child support, plus other measures (see § 16.1-279.1). A protective order may be valid up to two years. Types of protective orders:

1. Emergency protective order (EPO)
  - a. for domestic violence
  - b. for stalking or violent crimes resulting in serious bodily injury
2. Preliminary protective order (PPO)
  - a. for domestic violence
  - b. for stalking or violent crimes resulting in serious bodily injury
3. Full protective order (PO)
  - a. for domestic violence
  - b. for stalking or violent crimes resulting in serious bodily injury

Statutes relevant to protective orders include §§ 16.1-251, -253.1, -253.2, -253.4, -279.1, 18.2-60.4, 19.2-81.3, 152.8 through -152.10). For further discussion of protective orders, see section VI.

G. Stalking **[Note: This section revised July 2003.]**

Any person, except a law-enforcement officer, as defined in 9.1-101, and acting

in

performance of his official duties, and a registered private investigator, as defined in 9.1-138, who is regulated in accordance with 9.1-139 and acting in the course of his legitimate business, who on more than one occasion engages in conduct directed at another person with the intent to place, or when he knows or reasonably should know that the conduct places that other person in reasonable fear of death, criminal sexual assault, or bodily injury to that other person or to that other person's family or household member is guilty of a Class 1 misdemeanor.

*[Note: In 1996, the Commission on Family Violence Prevention published an outline curriculum on stalking which analyzes the behaviors that constitute stalking and offers preventive measures and investigative suggestions.]*

1. Stalking behaviors include following a person to home, work, and other places, parking outside home or office, threatening notes or telephone calls, threats, or computer-based, on-line threats.
2. A person who violates any provision of a protective order related to stalking is guilty of a Class 1 misdemeanor (§ 18.2-60.4).
3. A third or subsequent conviction occurring within five years of a conviction for an offense under this section or for a similar offense under the law of any other jurisdiction shall be a Class 6 felony. **[Note: This paragraph corrected November 2004.]**

#### **IV. PROCEDURES - General responsibilities**

- A. Department personnel shall refer victims of domestic violence, stalking, or serious bodily injury crimes to appropriate community resources (mental health agencies, medical doctors, legal assistance agencies, victim/witness assistance programs, and domestic violence shelters/programs), and shall provide victims with the name, address and telephone number of the Commonwealth's Attorney and the investigating law enforcement agency. Where possible, officers shall help victims directly access referral agencies. (See also VII.G.5.) Referrals help prevent future disturbances. **[Note: This paragraph corrected November 2004.]**
- B. Department personnel shall be trained about domestic violence and its impact. Personnel must be well trained to confront unexpected violence. Disturbance calls can be dangerous to responding officers. Officers are encouraged to consult community resources such as the local domestic violence shelter and the local victim/witness advocacy program.

C. Dispatcher (communications center) responsibilities

1. Because the dispatcher is likely to be the first person to receive the call, he or she is instrumental in determining the type of response.
2. The dispatcher is responsible for deciding whether an officer is needed at the scene. To make that decision, the dispatcher shall determine the following, if possible:
  - a. Who is complaining? Phone number? Whereabouts and identity of the suspect/aggressor?
  - b. Name of caller and location of incident? Location of caller and complainant, if different? Phone numbers?
  - c. Is the crime (incident) in progress or when did it occur?
  - d. Is a weapon involved?
  - e. Have people at the scene been injured? Is an ambulance needed?
  - f. Presence of children? Witnesses?
3. At this point, if evidence of injury or a weapon exists, someone has threatened violence, or the complainant requests an officer, dispatch one immediately (two officers preferred) and an ambulance, if needed. The dispatcher shall perform a VCIN inquiry and give the results to the responding officer(s) before their arrival at the scene. Keep the caller on the telephone, if possible, and obtain additional information:
  - a. Suspect's whereabouts? If not known, obtain vehicle description, direction of travel, and elapsed time and access to weapons.
  - b. Were alcohol or drugs involved?
  - c. A history of calls to this address? Outstanding warrants on disputants? Probation/parole status of suspect/aggressor?
  - d. A history of previous arrests?
  - e. A protective order in effect?



4. The dispatcher shall maintain telephone contact until the officers arrive in order to monitor the incident and provide support to the victim. The dispatcher shall advise the victim of the intended department response. Use crisis intervention skills. (See Appendix to GO 2-28.)
5. The dispatcher shall provide the responding officer with as much information as possible to identify risks at the scene.
6. See Victim Services, GO 2-28, dispatcher responsibilities.

## **V. PROCEDURES - Patrol responsibilities**

### **A. Arrival at the scene**

1. Obtain all available information from the dispatcher before arrival.
2. Approaching the scene.
  - a. When possible, officers should wait for back-up help, discuss a strategy, and approach the dispute scene in pairs.
  - b. Avoid the use of sirens and other alarms in the vicinity of the scene. The suspect might be dangerous and could turn a weapon on arriving officers.
  - c. Observe the location of the dispute before contacting the complainant. Consider the surroundings. Park the marked car a short distance away. Each officer should follow a separate approach to the scene of the dispute, maintaining maximum cover and an escape route. From this point on, officers should remain within sight of one another, if possible.
  - d. Before knocking on the door, listen and look in any nearby window to obtain additional information about the situation (e.g., layout of the house, number of people, weapons, evidence of violence or damage).
  - e. Officers must be concerned for their own safety as well as the disputants'. To minimize the possibility of injury, stand to the side of the door and not in front of windows when knocking. The unexpected may occur when the door opens.

3. Initial contact with occupant(s).
  - a. Identify selves as law enforcement officers by name, give an explanation of your presence, and request entry into the home (when conditions permit). Ascertain identity of complainant, and ask to see him or her and any other person at the home.
    - (1) Officers shall not accept statements from any disputant or witness that the call was a mistake without investigating further. Officers shall not leave without interviewing the complainant.
  - b. If entry is refused, officers must explain that they must make sure there are no injured persons inside. If no one responds to knocking, officers shall try to establish voice contact by shouting for an answer.
  - c. Refusal of entry or no response to a knock at the door may require a forced entrance **only** if officers have a reasonable suspicion that the safety of people inside may be in jeopardy.
    - (1) In deciding to make a forced warrantless entry, officers shall evaluate the following elements:
      - (a) The degree of urgency involved and the time required to get a warrant.
      - (b) The possibility of danger to others, including officers left to guard the site.
      - (c) Whether the suspected offense involved violence.
      - (d) Whether officers reasonably believe that persons may be armed.
  - d. Officers may conduct a search of the premises if consent has been given to do so. Although a consent search eliminates the need for a warrant and for probable cause, such consent must be freely and voluntarily given. If two people have joint ownership or possession of a place or thing, **either one** may give a valid consent.

- (1) A spouse can consent to the search of premises used jointly by both husband and wife. This also applies if the man and woman are unmarried cohabitants. If one of them exercises sole control over part of the premises, the other cannot give valid consent to search that part.
  - (2) If the complainant has asked for law enforcement assistance in retrieving personal property from his or her residence, the officer must first determine if the complainant has lawful authority to do so. If so, the officer shall stand by to preserve the peace, but may advise the disputants that rights to any disputed property can only be determined by the courts.
- e. Officers may also make a warrantless entry to conduct a search if an emergency exists. Officers must have a reasonable belief that such an emergency does exist (example: officers believe that someone, perhaps a child, is in need of emergency assistance).
  - (1) Officers shall evaluate the following elements when considering a warrantless entry:
    - (a) The degree of urgency involved and the time required to get a warrant.
    - (b) The possibility of danger to others, including officers left to guard the site.
    - (c) Whether the suspected offense is serious or involves violence.
    - (d) Whether officers reasonably believe that persons may be armed.
  - (2) Finally, officers are reminded that they have a lawful right to investigate any situation which they reasonably believe to be an emergency.
- f. Once inside, establish control by:
  - (1) Inquiring about the nature of the dispute.

- (2) Identifying disputants.
  - (3) Being aware of potential weapons in surroundings.
  - (4) Determining if persons are in other rooms, whether children or adults, and the extent of any injuries (these persons should be separated from the parties involved and kept out of hearing range so their status as possible witnesses won't be compromised).
- g. Protect the victim from further abuse. Separate the victim from the suspect and arrange for medical attention if victim is hurt. If the victim appears injured and yet refuses medical assistance, carefully document any observed injuries, as well as the refusal of medical treatment. Photograph the victim's injuries.
  - h. Ascertain whether a protective order has been violated.
  - i. If weapons (whether firearms, knives, or any other object which could be used as a weapon) are present, secure them away from the disputants, if practicable, while the disputants are being interviewed. If appropriate, seize weapons for evidence. Refer to II.A.7 regarding § 18.2-308.1:4 which prohibits persons under protective orders from purchasing or transporting firearms. **[Note: This paragraph corrected November 2004.]**
- 4. Transporting family/household members to the hospital, safe shelter, or magistrate. See § 16.1-253.2 and GO 2-28 (concerning transportation services for victims).
    - a. Officers shall transport victims to a safe location as they wish or as the circumstances require. (See §§ 19.2-81.3, -81.4.) **[Note: The law requires officers either to transport or arrange for transportation to a hospital, safe shelter, or a magistrate.] [Note: This provision revised July 2003.]**
    - b. If a complainant seeks officers' help in entering his or her residence to obtain personal property, the officers must determine that the complainant has lawful authority to do so; must advise all parties that they are accompanying the complainant to obtain items for immediate personal (or children's) use; that the officers' function is to maintain order; that any dispute over property is a matter for the courts to decide.

B. Interviewing all disputants

1. Ensure safety and privacy by interviewing the victim in a place separate from the suspect, if identifiable.
2. Critical to the success of the interview is the officer's manner. Officers must listen, show interest in the disputants and their problem, and remain aware of nonverbal communications signals (see appendices to GO 2-28).
3. Officers shall attempt a low-key approach in domestic violence cases. Maintain good eye contact through natural, spontaneous glances. (Fixed gazes or staring increase fear and hostility.) A relaxed stance and appropriate facial and head movements demonstrate interest and encourage the victim to continue speaking.
4. If possible, separate the parties so that they can individually describe the incident without interruption. (This may help the parties relieve emotional tension.) Although the disputants may be separated, officers shall remain within sight and hearing of each other.
5. After the parties have given their statements, the officers should ask about details for clarification, and summarize the stated accounts (which allows the parties to point out anything that might be misrepresented).
6. Be aware that parties may make excited utterances which may have evidentiary value. Record these utterances when practicable and note them in your report. **[Note: This provision added July 2003.]**

C. Interviewing the victim

Ascertain the following information from the victim:

1. What happened.
2. Any injuries, who caused them, and what weapons or objects were used.
3. Relationship to suspect.
4. Any threats made against victim or others.
5. Forced sexual contact against victim's will.

6. Any court cases pending against suspect or any protective orders in effect.
7. Is suspect on probation or parole.
8. Did suspect threaten others, particularly children, damage property, or hurt pets.

D. Interviewing witnesses

1. Interview any witnesses to the incident--children, other family members, neighbors--as soon as possible. See "Gathering Evidence" under section VII.F.8 (witness statements). **[This provision revised July 2003.]**
2. Remember that witnesses may be experiencing significant emotional crises that might influence the accuracy of their accounts.
3. If witnesses provide information about prior assaults, document them to help establish a pattern.
4. Children of disputants should be interviewed with care and kindness. Sit, kneel, or otherwise be at their level when speaking to them. Signs of trauma or abuse should be noted.

**VI. PROCEDURES - Issuing an emergency protective order**  
**[Note: Section VI corrected November 2004.]**

A. Emergency protective orders (EPO) (domestic violence)

1. The EPO aims to protect the health or safety of **any person. Regardless of a decision to arrest**, if an officer has at least a reasonable belief that family abuse has occurred and there exists probable danger of further abuse, the officer shall petition a judge or magistrate to issue an EPO. (See § 16.1-253.4.)
  - a. If circumstances make it impossible or inappropriate for an officer to obtain the EPO, the officer shall advise the victim that he or she can request an EPO directly from a magistrate or the Juvenile and Domestic Relations Court.
  - b. The victim does not need to press charges or swear a warrant. The presence of the victim or suspect is immaterial to obtaining an

## EPO.

- c. An EPO may order a stop to abusive behavior, prohibit contact between parties, order the abuser out of a shared home, and provide other relief.
2. An officer can petition for an EPO by telephone or in person.
3. The EPO expires 72 hours after issuance. If the expiration would occur when court is not in session, then the EPO expiration is delayed until 5 p.m. of the next business day. Note that a law-enforcement officer may request an extension of an EPO if the person in need of protection is mentally or physically incapable of doing so. The victim can petition for a preliminary protective order before the expiration of an EPO.
4. The officer shall complete form DC-626 and serve a copy to the respondent as soon as possible. **The order cannot be enforced until the abuser has been served.** The clerk/dispatcher shall enter the relevant information into VCIN upon receipt and update the entry upon service of the order.
5. The officer shall submit the original order to the issuing judge or magistrate, provide a copy to the victim, and attach a copy to the incident report.

## B. Emergency protective order (EPO) (stalking/serious bodily injury)

1. The victim of stalking or a violent crime resulting in serious bodily injury may obtain an EPO once he or she has sworn an arrest warrant for the offense under § 18.2-60.3 (see also § 19.2-152.9-.10). The abuser can be anyone, not necessarily a family or household member. **The EPO cannot be issued until an arrest warrant has been obtained.**
  - a. An EPO for stalking or serious bodily injury crimes may order the respondent to stop the threatening behavior, prohibit the stalker from contacting the victim in any way, and provide other relief.
2. An officer can request a warrant and an EPO by telephone or in person under a reasonable belief that stalking or a violent crime resulting in serious bodily injury has occurred and will occur in the future. Further, the victim can request an EPO in person at the office of a magistrate or the General District Court Clerk's Office.

3. Provisions A.3-5 above apply.

C. Preliminary protective order (PPO) (domestic violence)

1. An abused/family household member may petition the Juvenile and Domestic Relations Court for a PPO (see § 16.1-253.1). After an *ex parte* hearing and based on immediate and present danger of family abuse or evidence sufficient to establish probable cause that family abuse has recently occurred, the court may issue a PPO (protecting the petitioner **or** his or her family, or both). At the hearing where the PPO is issued, a hearing date for a permanent or full protective order shall be set. The PPO is valid for up to 15 days.
  - a. The PPO may order the suspect to stop the abusive behavior, prohibit contact between parties, order the abuser out of a shared home, grant exclusive possession over a home or car, and award temporary custody of children.
  - b. A victim does not have to have an EPO in order to obtain a PPO.
  - c. **The victim** must petition the Juvenile and Domestic Relations Court for a PPO.
2. The police/sheriff's records clerk shall enter the order into VCIN upon receipt, which record shall be updated upon service of the order.

***[Note: A law enforcement agency shall serve the PPO on the abuser as soon as possible.]***

D. Preliminary protective order (PPO) (stalking/serious bodily injury)

1. Generally, the provisions of C above apply in stalking or serious bodily injury cases. The victim must go to the General District Court of the jurisdiction where the stalking or serious bodily injury crime occurred to petition for the PPO.
2. A PPO may order the respondent to stop stalking or violent behavior, prohibit contact between parties, and provide other relief as necessary.

E. Full protective orders (domestic violence and stalking/serious bodily injury)

1. Domestic violence: In addition to the restrictions and prohibitions placed



in a PPO, the full protective order may require an abuser to pay for the victim and children to live elsewhere, and for the abuser to receive treatment or counseling.

- a. The victim must attend a protective order hearing at the Juvenile and Domestic Relations Court. The abuser must have notice and opportunity to attend the hearing.
  - b. The full order is valid for up to two years.
2. Stalking or Serious Bodily Injury: The full protective order observes the same general restrictions and prohibitions of a protective order for domestic violence.
- a. The victim must attend a protective order hearing at the General District Court. The abuser must have notice and opportunity to attend the hearing.
  - b. The full order is valid for up to two years.

F. Full faith and credit

Officers shall enforce protective orders from other states or possessions of the United States as if they were issued in Virginia. This applies to all orders in which the respondent has received notice and opportunity to attend a protective order hearing. Enforcement of out-of-state protective orders **does not** require that they be registered in Virginia. If officers are unable to verify an outstanding protective order, they must nevertheless honor it. Officers cannot arrest for violation of the order, however, if the violator has not been served with it.

*[Note: Some agencies allow officers an extra measure if they cannot validate a foreign protective order. If they are not satisfied that the order is valid, then they may ask victims to sign a statement specifying what court, jurisdiction, conditions, and expiration apply.]*

G. Purchase or transportation of a firearm by a person subject to protective orders

§ 18.2-308.1:4 prohibits any person subject to a protective order for domestic violence or stalking/serious bodily injury (as defined in the statutes cited in this order) from purchasing or transporting a firearm while the order is in effect, punishable as a Class 1 misdemeanor. Firearms transported or purchased in violation of this law shall be confiscated and subject to forfeiture.

## VII. PROCEDURES - Arrests

- A. Officers may make an arrest without a warrant if they have probable cause to believe that a felony has been committed in or out of his or her presence (§ 19.2-81, -81.3). The *Code* specifies the misdemeanors for which officers can arrest for offenses not committed in their presence. Further, **the department promotes a policy of arrest when the elements of an appropriate offense are present.** Officers cannot release the abuser on a summons, but **must take the abuser before a magistrate.** See GO 2-1 for a discussion of probable cause to arrest and GO 2-4 for guidelines on arrests.
  
- B. Officers who develop probable cause that a person was the predominant physical aggressor in a violation of § 18.2-57.2 (assault/battery against a family/household member), § 16.1-253.2 (violation of a protective order), shall arrest and take him or her into custody (§ 19.2-81.3). Officers who develop probable cause that a person has violated a stalking/serious bodily injury protective order (§ 18.2-60.4 or) may arrest and take him or her into custody. (If the "no contact," "no trespass," or "no further abuse" provision of a protective order is violated, then it is treated as its own Class 1 misdemeanor offense.) **[Note: This paragraph corrected November 2004.]**
  1. Knowing that the safety of the complainant or victim probably will be compromised by an arrest, and recognizing that circumstances may preclude physical arrest, the officer must decide, within his or her discretion, whether to arrest. Officers shall not instruct victims to obtain warrants for applicable offenses; officers themselves shall obtain the warrants if circumstances so require. If circumstances nevertheless dictate no arrests, see VII.E below. **[Note: Paragraph revised July 2003.]**
    - a. If an arrest is made, advise the victim that the case **may** be prosecuted even if the victim later declines to testify.
    - b. If officers cannot identify a predominant physical aggressor and do not make an arrest, they shall nevertheless thoroughly document the incident. Further, officers shall not threaten to arrest all parties involved for the purpose of discouraging future requests for law enforcement intervention. **[Note: Paragraph revised July 2004.]**
  2. In cases where the conditions of a protective order have been violated (§ 18.2-119, , § 19.2-152.8), officers shall review the victim's copy of the order, checking it for validity. If a protective order exists and its terms

("no contact," "no trespass," or "no further abuse") are violated then the officer shall arrest the violator if probable cause exists. Note: when the respondent is convicted of a protective order violation, the court is required to issue a new protective order. **[Note: This paragraph corrected November 2004.]**

3. Officers making arrests under § 19.2-81.3 (and § 18.2-60.3,) shall petition for an emergency protective order (§ 16.1-253.4, and § 19.2-152.8 for stalking/serious bodily injury). If the officer does not arrest but a danger of family abuse, stalking or serious bodily injury still exists, the officer shall petition for an emergency protective order. **[Note: This paragraph corrected November 2004.]**

- a. If children are involved in the incident, officers shall contact the on-call Child Protective Services worker **if** a child is abused **or** neither parent can reasonably look after the child's safety and well-being (neglect is a separate, reportable offense).

*[Note: If a child has not been abused but neither parent can reasonably look after the child's safety (possible neglect), Child Protective Services may be the best contact. If neither abuse nor neglect seem evident but a child is present at the scene of a domestic disturbance, document the child's presence in the report. Devise a protocol appropriate to the resources in your jurisdiction.]*

- b. If the abuser is not present, officers shall try to serve the protective order as soon as possible and shall so advise the victim once service has been made (and officers shall arrange to have the order entered into VCIN upon receipt).

4. In determining probable cause, the officer **shall not** consider:

- a. Whether the parties are married or living together, or their race, sex, ethnicity, social class, or sexual orientation.
  - b. Whether the complainant has not sought or obtained a protective order.
  - c. The officer's own preference to reconcile the parties despite the complainant's insistence that an arrest be made.
  - d. That the complainant has called for law enforcement protection previously and has not pursued or has withdrawn the criminal complaint against the abuser.

- e. That the complainant has not begun divorce proceedings.
  - f. Assurances of either disputant that violence will stop.
  - g. The lack of visible bruises or injuries.
  - h. Denial by either disputant that violence occurred.
5. Officers shall be alert to the elements of a stalking/serious bodily injury arrest. Ask victims:
- a. Is the suspect following you or did he or she follow you?
  - b. Is the suspect harassing you or did he or she harass you?
  - c. Is the suspect threatening you or did he or she threaten you?
  - d. Are you fearful as a result of the suspect's conduct?
  - e. Are you fearful of death, sexual assault or bodily injury as a result of the suspect's conduct?

**[Note: Above section corrected November 2004.]**

6. The possibility of other offenses shall not be overlooked. Other related offenses include:
- a. Marital sexual assault (§ 18.2-67.2:1).
  - b. Violation of a stalking/serious bodily injury protective order (§§ 18.2-60.4, 19.2-152.8, -152.9, 152.10). **[Note: This provision corrected November 2004.]**

C. Factors favoring the decision to arrest

Arrest is the most appropriate response when these factors are present:

- 1. Serious, intense conflict.
- 2. Use of a weapon.

3. Previous injury or damage.
4. Previous court appearance against the offending party.
5. Previous attempt to sever the relationship.
6. Previous calls for law enforcement help. **[Revised July 2003.]**
7. When a felony has occurred.
8. Evidence of drugs or alcohol use at the assault.
9. Offenses committed with the officer present.
10. Valid warrants on file for other crimes.
11. A protective order has been violated. Charge as a Class 1 misdemeanor under § 16.1-253.2.
12. Aggressive behavior toward anyone, pets, or any other threatening behavior.

D. Making the arrest

1. Arrest the suspect if he or she is present, apply handcuffs, inform him or her that the decision to arrest is a law enforcement one, and transport securely to the jail/magistrate.
2. If the suspect is absent or has been arrested, transport (or arrange transportation for) the victim to a safe shelter or other appropriate place. Circulate a "be-on-the-lookout" message describing the suspect and arrange for an arrest warrant.
3. If an arrest must be made because a protective order has been violated, verify its validity by:
  - a. Examining the victim's copy, if available.
  - b. Having communications search VCIN or contact the jurisdiction that issued the order to confirm its currency (see V.B.2).

*[Note: As noted under VII.B.2, if officers cannot validate a foreign protective order, then they may ask victims to sign a statement specifying what court, jurisdiction, conditions, and expiration apply.]*

**[The note above added July 2003.]**

E. If the abusive person is not arrested

1. Complete an incident report and give a copy or arrange to have a copy given to the victim (§ 19.2-81.3 applies). This procedure applies both for domestic violence and stalking/serious bodily injury. **[Note: This provision corrected November 2004.]**
2. Inform the victim that he or she can begin criminal proceedings at a later time. Provide information about how to file a criminal charge, including time, location, and case number, if available, and offer to help in filing charges at a later time.
3. Advise the victim of the importance of preserving evidence.
4. Explain to the victim about protective orders and how to obtain them and offer to help the victim obtain them later. **[Note: This provision revised July 2003.]**

*[Note: Consult with the commonwealth's attorney to determine what advice or guidance to give victims about protective orders.]*

5. If the victim wants to leave the premises to ensure safety, remain at the scene while the victim packs essentials. Advise the victim to take only personal items plus important papers (see V.A.4). **[Note: This provision revised July 2003.]**
6. Give the victim telephone numbers of emergency shelters in the area and the name, address and telephone number of the Commonwealth's Attorney and the investigating law enforcement agency. **[Note: This paragraph corrected November 2004.]**
7. Assure the victim that [your agency] shall assist in future emergencies and explain measures for enhancing his or her own safety.

F. Gathering evidence:

1. Physical evidence takes three forms in domestic violence cases: the injuries of the victim, evidentiary articles that substantiate an attack, and the crime scene itself.
2. The victim's account of injuries sustained should be corroborated by a physician.
3. When feasible, take photographs of injuries.
4. Photograph the crime scene to show that a struggle occurred; if photography is not possible, write a description of it.
5. Collect evidence according to the same principles as applied to any crime scene (see the appendix to GO 2-14).
6. If the suspect is under a domestic violence or stalking/serious bodily injury protective order and appears to have purchased or transported a firearm, confiscate it as evidence of § 18.2-308.1:4 (see also V.H.4.c below). **[Note: This provision revised July 2003.]**
7. Seize any weapons that the predominant physical aggressor used or threatened to use in the commission of any crime. **[Note: This provision revised July 2004.]**
8. Obtain statements from all witnesses, particularly noting any excited utterances that bear on the incident.

G. Documenting the incident

1. All incident reports on domestic violence and stalking/serious bodily injury shall follow general reporting procedures with special attention to the victims services crime report procedure in GO 2-28. **[Note: This provision corrected November 2003.]**
2. Include in all reports of domestic violence:
  - a. Facts and circumstances of domestic violence including a description of why one disputant was deemed the predominant physical aggressor. **[Note: This paragraph revised July 2004.]**
  - b. Victim's statements as to the frequency and severity of prior incidents of abuse by the same family or household member.

- c. The victim's statements as to the number of prior calls for law enforcement assistance.
  - d. The disposition of the investigation.
- 3. In any case involving domestic violence, stalking, serious bodily injury or related crimes, thoroughly document probable cause to arrest. **[Note: Provision corrected November 2004.]**
- 4. If an arrest is not made for domestic violence, stalking, or serious bodily injury the incident must still be documented, where either no probable cause existed, or circumstances dictated another course of action. In such cases, in addition to the above considerations, officers shall note:
  - a. What referral information was given.
  - b. The name of any counselor contacted.
  - c. Why no arrest was made, nor any warrant issued.  
**[Note: First paragraph corrected November 2004.]**
- 5. If children were present, make a report of abuse or neglect, if appropriate, and forward it to Child Protective Services (see VII.B.3.a above). **[Note: Corrected July 2003.]**
- 6. Regardless of whether an arrest is made, the officer shall provide appropriate information to the victim, **both** orally and in writing, about legal and community resources available, including the name, address and telephone number of the Commonwealth's Attorney and the investigating law enforcement agency. **[Note: This paragraph corrected November 2004.]**
- 7. At the conclusion of legal proceedings, return evidentiary property to the victim. Coordinate the victim's appearances in court or for line-ups.  
**[Note: This provision and the below note added July 2003.]**

***[Note: Describe your local victims advocacy program here.]***

H. Arrests of law enforcement personnel

- 1. If the predominant physical aggressor or abuser is an employee of this



agency, the responding officer shall summon the field supervisor, who shall in turn notify his or her chain of command. **[Note: This paragraph revised July 2004.]**

2. The scene shall be secured and medical attention summoned, if required. The employee shall be disarmed or removed from access to weapons. The possibility exists that the employee's departmental weapon may be evidence of an offense.
3. The on-call investigator shall be summoned who shall begin an internal criminal investigation (see RR 1-9 for guidelines on internal criminal and administrative investigations).
  - a. If probable cause to arrest exists, the investigator shall arrest and gather evidence (including taking photographs) consistent with this general order.
  - b. The assigned investigator shall work with the responding patrol officer to ensure that the victim receives medical attention, if necessary, is transported to a hospital or safe shelter, and that all reports are completed, evidence gathered, and photographs taken. The responding patrol officer shall assist in obtaining an emergency protective order.

***[Note: The order should make clear whether the investigator or patrol officer is responsible for obtaining an emergency protective order and confiscating weapons. In any case, both measures must be undertaken.]***

**[Note above added July 2003.]**

- c. The investigator shall speedily present the case to the commonwealth's attorney.
4. Upon termination of the criminal investigation, the chief/sheriff may assign an officer to undertake an internal administrative investigation into the incident consistent with RR 1-9. The chief/sheriff may suspend the employee pending the outcome of the investigation.
  - a. Suspended employees shall immediately turn in all agency-issued weapons, vehicles, badges, and identification to the property officer.

- b. If the internal administrative investigation supports a violation of agency policy, the sheriff/chief shall take appropriate action consistent with personnel rules outlined in RR 1-7. Further, if the investigation confirms that domestic violence occurred, the sheriff/chief may require counseling, psychological evaluation, demotion, or termination of employment.
  - c. Federal law states that any person (including a law enforcement officer) convicted under any state or federal law for a misdemeanor involving the use of, attempted use of physical force, or the threatened use of a deadly weapon when committed by a current or former spouse, parent or guardian of the victim, a person sharing a child in common, or a cohabitant of the victim (past or present), is prohibited from shipping, transporting, possessing, or receiving firearms or ammunition. The offense may have occurred at any time. Law enforcement officers convicted of offenses involving weapons or threats of force may therefore be unable to maintain their certification.
    - (1) Note that officers who are the subject of a protective order shall not carry firearms. Officers who are the subject of a protective order shall turn in all agency-issued weapons.
  - d. Refer to RR 1-02.V.Z for guidance on arresting officers of other jurisdictions, and RR 1-02.V.P for requirements that employees report court actions to which they have been a party.
- 5. The sheriff/chief shall ensure that any court orders or injunctions are served on the employee at the agency. The sheriff/chief shall ensure that legal papers are served in a private setting so that supervisory personnel can coordinate process service with counseling or psychological services.
  - a. The employee's supervisor shall monitor the employee's behavior. Upon service of any court papers, the supervisor shall be present to review any affidavits supporting such papers. The supervisor shall stay alert to behavior that may be unseemly or indicative of problems requiring professional intervention.
- 6. **Officers are reminded that RR 1-02.V.P requires notification of the chief/sheriff of any civil or criminal action pending against them.**